IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.08.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.No.1128 of 2007 and WP.No.26926 of 2005
and connected miscellaneous petitions

S. Uthami ... Appellant/Petitioner

-vs-

1.Commissioner of Municipal Administration
Chepauk, Chennai 5.

2.Executive Officer
Sivagiri Special Panchayat
Sivagiri, Erode District. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge dated 16.04.2007 made in WPMP.No.29344 of 2005 in W.P.No.26926 of 2005.

WPMP.29344/05 presented to this Court to stay the operation of the order passed by the 2nd respondent in his proceedings Na.Ka.No.209/2004 dated 08.08.2005 pending writ petition filed under Article 226 of the Constitution of India, praying for the issuence of Writ of Certiorari, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings Na.Ka.No.209/2004 dated 08.08.2005 and quash the same.

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, as stated therein.

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For appellant / petitioner :: Mr.C. Selvaraju,Sr.Counsel for Mr. S. Mani

For respondents :: Mr. P.S. Jayakumar for R.2
Mr. Rajakalifulla
Govt. Pleader for R.1

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COMMON JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

By consent, the writ petition as well as the writ appeal are taken up for final disposal.

2. The writ appeal is directed against the order of the learned single Judge dated 16.04.2007 passed in WPMP.No.29344 of 2005 and WVMP.No.141 of 2007 in W.P.No.26926 of 2005, by which the learned single Judge has directed to continue the order of interim stay by modifying the same on condition that the writ petitioner shall deposit 50% of the amount demanded by the respondents within a period of eight weeks.

3. The appellant is the original writ petitioner. The appellant, who is stated to have settled at Chennai has decided to put up a Marriage hall within the jurisdiction of the second respondent Panchayat and she has applied for the loan amount of Rs.3 lakhs from Karur Vysya Bank, based on the planning permission and conducted Graha Pravesam on 31.05.2005. The second respondent issued a notice, fixing the property tax as Rs.37,739/-, which was subsequently reiterated by the notice dated 17.12.2004. The said demand is stated to have been made under the District Municipalities Act, ignoring the fact that the second respondent was down graded as Village Panchayat and therefore, it is only the Tamil Nadu Panchayats Act which is applicable.

4. It is also the case of the appellant that in respect of fresh constructions, pre-assessment notice must be given based on the annual rental value and there was no pre-assessment notice issued and a destraint notice was issued on 17.12.2004, against which the appellant filed WP.No.1303 of 2005, which was allowed by this Court on 24.01.2005, directing the respondents to issue fresh assessment notice on the basis of annual rental value, as against which the first respondent filed W.A.No.475 of 2005. The order of the learned single Judge was confirmed by the Division Bench in the said writ appeal and further the Bench has directed to treat the calculation sheet issued by the respondents dated 04.01.2005 as pre-assessment notice and directed the appellant to file her objections, based on which the appellant has filed her objections. In spite of the same, the second respondent has issued the impugned order dated 08.08.2005, demanding the appellant to pay a sum of Rs.37,739/-, as if the Division Bench has issued such direction. It is, as against the said order the appellant has filed the writ petition No.26926 of 2005. The learned single Judge, while admitting the writ petition has granted an order of interim stay and on the respondents filing application to vacate the order of interim stay, the learned single Judge has imposed a condition on the appellant to deposit 50% of the amount demanded within a period of eight weeks, against which, the present appeal is filed.

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5. A reference to the order of the Division Bench in W.A.No.475 of 2005 dated 27.06.2005 clearly shows that the Division Bench has only directed the calculation memo given by the respondents to be treated as a pre-assessment notice and directed the appellant herein to file her objections and thereafter the respondents to consider the same and pass orders in accordance with law. While so, a reference to the impugned order passed by the second respondent dated 08.08.2005 shows that the second respondent has misconstrued the order of the Division Bench of this Court as if the Division Bench has issued direction in favour of the respondents and on the basis of the misconstruction of the order, directed the appellant to pay the amount of Rs.37,739/-. Therefore, there is no difficulty in coming to the conclusion that the impugned order of the second respondent dated 08.08.2005, which is impugned in this writ petition is totally against the direction given by the Division Bench as stated above.

In view of the same, the impugned order of the second respondent dated 08.08.2005, is set aside with direction to the second respondent to treat the calculation sheet as pre-assessment notice and pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of copy of this order. It is made clear that in the event of the appellant being affected by such order of the second respondent as per the direction given herein, it is not open to the appellant to resort to the remedy under Article 226 of the Constitution of India, even though she is entitled to resort to appellate remedy available under law.

The writ appeal and the writ petition stand allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. Commissioner of Municipal Administration, Chepauk, Chennai 5.

2. Executive Officer, Sivagiri Special Panchayat
Sivagiri, Erode District.

1 cc To Mr.P.S.Jayakumar, Advocate, SR.56368.
1 cc To Mr.S.Mani, Advocate, SR.56738.

W.A.No.1128 of 2007

VRK(CO)
RVL 21.09.2007

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